IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3364 OF 2006.

Shri Nanajiram Joraji Chaudhari ..Applicant.
V/
The State of Maharashtra ..Respondent.

Mr. U.R.Agandsurve for the applicant
Miss Rajashree M. Gadhvi, A.P.P.for the State.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 19TH SEPTEMBER, 2006.

P.C.

. The applicant has been arrested on 22nd May, 2006 in connection with C.R.No. 76/2005 alleging offence punishable under section 302 and 201 of Indian Penal Code. The original complainant- Gigaram Thakarji Chaudhari had initially lodged FIR alleging that the present applicant had strangulated his deceased brother Mahadevram. The dead body was thrown from the building and thereafter found. The FIR was registered, investigation proceeded and the applicant came to be arrested.

2. Before filing of a charge-sheet an application for bail was preferred by the applicant which has been rejected by the order dated 23rd August, 2006.

3. When this application was placed before me my attention was invited to a criminal complaint filed by the original complainant in the Court of Judicial Magistrate, F.C. Sangola, in which he alleged that the real culprit is one Thanaram Jagaji Choudhari. Upon this complaint, the learned Magistrate has passed an order which reads as under :-

> "Read complaint. Heard Advocate. Offences alleged in complaint are cognizable nature. Investigation at the hands of police is necessary. Therefore, complaint be sent to PI, Sangola with direction to hold investigation under Section 156(3) of the Code of Criminal Procedure and to take action if necessary and to submit report on or before 16/9/2006"

4. I had adjourned this application to enable the learned A.P.P.to take instructions as to what steps the investigating machinery is taking with regard to the direction issued by the learned Judicial Magistrate, F.C., Sangola. Today the I.O. is present and after taking instructions from him, the learned A.P.P. states that the statement of the applicant who is in custody has been recorded but the statement of original complainant could not be recorded for want of his co-operation.

5. In my view, the complainant who has lodged the F.I.R. pursuant to which the applicant was arrested is duty bound to assist in identification and apprehension of the real culprit. Moreso, when he names somebody else as real culprit and his grievance has been noted by the learned Judicial Magistrate, F.C. then the investigating machinery is duty bound to submit the report as sought by the learned Magistrate and take further steps in accordance with law. Any delay is likely to prejudice all concerned including the present applicant.

6. In such circumstances, in the interest of justice, it is directed that the investigating machinery shall record the statement of the original complainant, so also complete further investigation within a period of 4 weeks from today and submit necessary report in accordance with law to the J.M.F.C., Sangola.

7. Upon conclusion of the investigation and filing of the report, it would be open for the applicant to apply for being released on bail afresh and such application shall be considered by the trial Court

uninfluenced by its earlier order and on the basis of the aforesaid events.

8. All contentions in that behalf are kept open. Application is disposed of.

(S.C. DHARMADHIKARI, J.)